

**U.S. Senate
Republican Policy
Committee**

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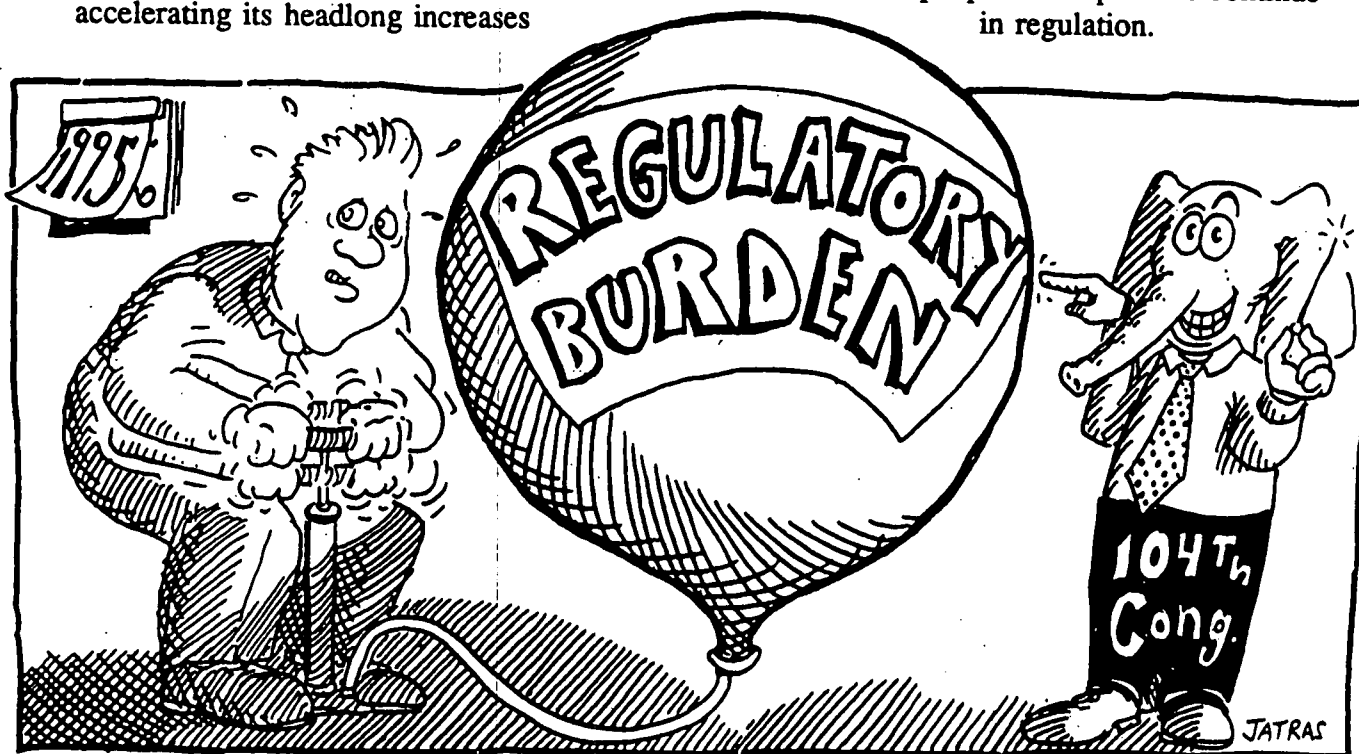
January 6, 1995

4,300 Regulatory Actions Planned

Regulations Balloon Under Clinton

Excessive regulation and red tape imposes an enormous burden on our economy. This hidden tax pushes up prices for goods and services on American households, dampens business investment, and limits the ability of small businesses to create jobs. The Clinton Administration's own *National Performance Review*, issued September 7, 1993, observed that the compliance cost imposed by federal regulations on the private sector alone were "at least \$430 billion per year -- 9 percent of our gross domestic product [p. 32]." Other economists have placed the direct combined federal regulatory burden on State and local governments and the private sector at from \$500 billion a year to over \$850 billion per year. The indirect and cumulative productivity losses from federal regulation could double the annual cost figures.

Although the Clinton Administration's *National Performance Review* promised to "end the proliferation of unnecessary and unproductive rules," the Administration's efforts appear focused solely on internal agency rules. In fact, the Clinton Administration, understandably, has been reluctant to tell the American people of its plans to continue accelerating its headlong increases in regulation.



The Clinton Administration intentionally violated the October 31 deadline established by the Regulatory Flexibility Act of 1980 (P.L. 96-354) and held up publication of the *Regulatory Plan and Unified Agenda of Federal Regulations (Regulatory Plan)* until after the mid-term elections. On November 14, 1994, the Clinton Administration finally released its *Regulatory Plan*, which listed the Administration's 767 regulations completed during the past six months prior to October 1, 1994, and the Administration's intention to pursue 4,300 additional rulemakings during Fiscal Year 1995 and beyond.

Talking Points on the Administration's Regulatory Plan

- As of October 1, 1994, the Clinton Administration is intending to pursue approximately 4,300 regulatory actions during Fiscal Year 1995 and beyond.
- Final Rules: For Fiscal Year 1995 and beyond, the Administration is planning to pursue 1,937 final rules:
 - Between October 1994 through April 1995, the Clinton Administration is scheduled to issue 872 final rules; and
 - 292 final rules are planned to be issued for which no specific dates were included in the *Regulatory Plan*.
- Proposed Rules: For Fiscal Year 1995 and beyond, the Administration is planning to pursue 2,100 proposed rules;
 - Between October 1994 and February 1995, the Administration is scheduled to propose at least 682 regulations; and
 - 236 regulations are planned to be proposed for which no specific dates were included in the *Regulatory Plan*.

Unfunded Mandates Increasing

The economic costs imposed by regulation are not limited to the private sector. State and local governments have been forced to bear additional costs to comply with the growing number of "unfunded mandates" handed down from the federal government. The more money that municipalities spend to comply with federal mandates, the less money they have available for education, crime prevention, and roads and bridges. For example, the State of Maryland has just decided to use a portion of its federal highway funding to subsidize the higher costs of automobile emissions testing required by the EPA. On Tuesday, January 10, the Senate is scheduled to begin consideration of S. 1, Senator Kempthorne's Unfunded Mandate Reform Act of 1995.

- The Clinton Administration completed 757 rules and regulations in the last six months prior to October 1, 1994.
- The number of regulatory actions proposed in the *Regulatory Plan* has been calculated by RPC by taking the 5,333 total number of rules listed in the *Regulatory Plan*, less 757 rules completed in the last 6 months, and less 262 "most significant actions," which are listed twice;

Clinton Approaching Carter Record for Federal Register Pages

For each of the first two years of the Clinton Administration, the number of pages of actual regulations and notices published in the *Federal Register* has exceeded any year since the Carter Administration. Despite rhetoric to the contrary, the Clinton Administration has been increasing, not decreasing, the number of regulations. The number of "actual pages" [not counting corrections and blank pages] in the *Federal Register* in 1994 was 64,914. This is an increase over 1993's number of 61,166 total pages. (See chart next page).

The Clinton Administration's record increases in *Federal Register* actual pages is exceeded only by the largest *Federal Registers* in the history of the Republic, which were compiled during President Carter's last two years in office, culminating in 73,258 actual pages in 1980. In contrast, President Reagan, with help from a Republican Senate, reduced the actual pages down to 44,812 in 1986. As soon as the Democrats regained full control of Congress, however, the number of regulations started increasing again. The Clinton Administration's 1994 number of pages, with the assistance of a Democratic Congress, is a 45 percent increase over the Reagan Administration's 1986 number.

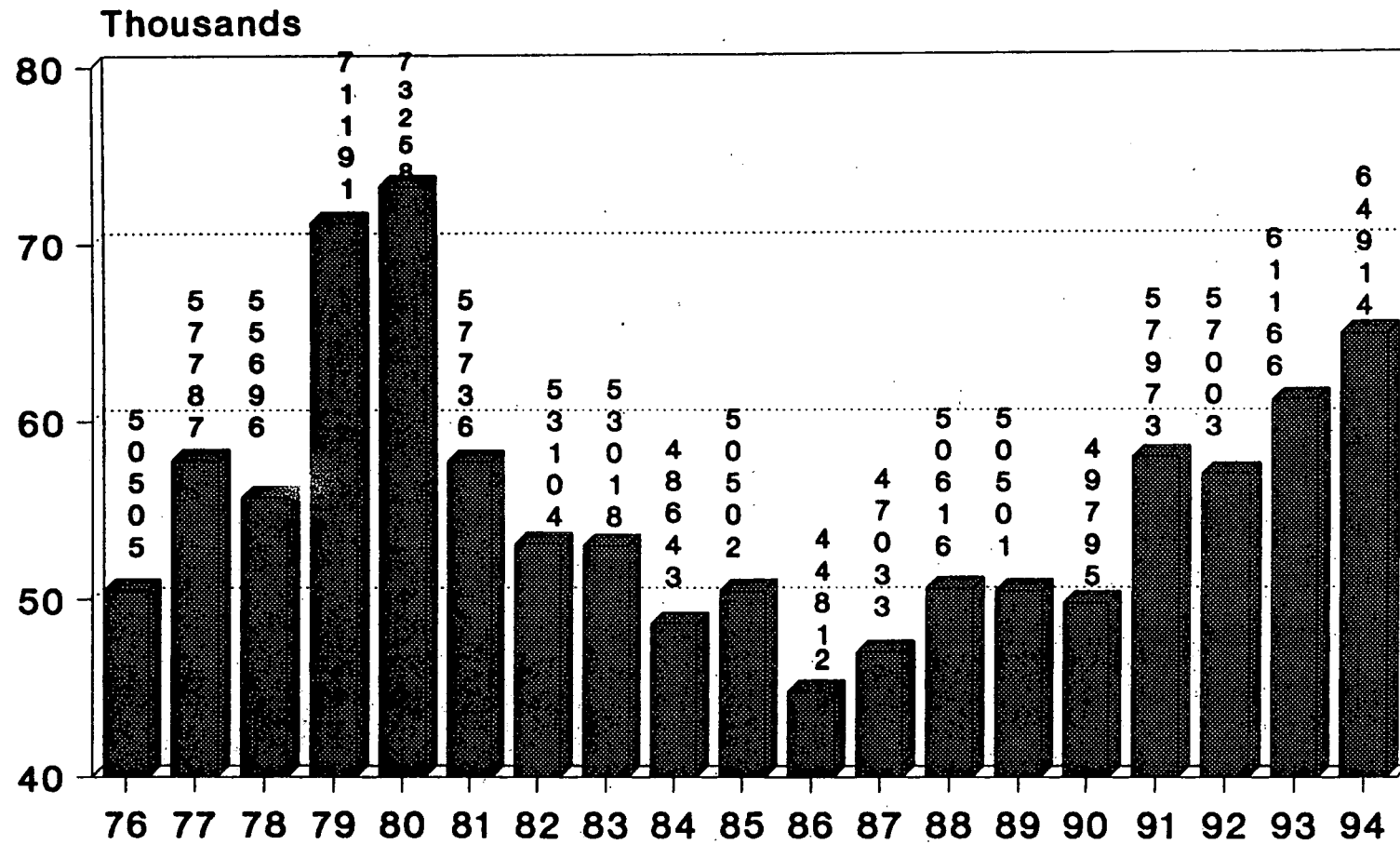
Bill Clinton is No Ronald Reagan

The November 14 *Regulatory Plan* is the first to be released by the Clinton Administration under the new Executive Order 12866 (signed September 30, 1993), which allows federal agencies to issue regulations with less oversight and review by the Office of Management and Budget (OMB) than had been established under the previous Executive Order establishing regulatory review procedures. The previous OMB review procedures were established by President Reagan in Executive Order 12291 (signed February 17, 1981).

President Clinton's Executive Order 12866 used many of the same concepts and terms that were used in President Reagan's Executive Order 12291. However, significant differences from the Reagan Executive Order inherently favor the promulgation of more regulations under the Clinton Executive Order. For example:

Federal Register

Actual* Pages Published



*Blank pages & corrections are excluded.

Source: Office of the Federal Register

- It is the expressed purpose of Clinton's Executive Order 12866 to improve the development of federal regulations and place more discretionary authority of rulemaking decisions in the regulatory agencies. The order expressly reduces the oversight function of the OMB over agency rulemaking, a safeguard that was a central feature of the Reagan Executive Order.
- Clinton's Executive Order states that its goal is to "reform and make more efficient the regulatory process." In contrast, President Reagan's Executive Order was intended to improve the quality but also to "reduce the burdens of existing and future regulations."
- Clinton's Executive Order directs agencies to promulgate regulations after a "reasoned determination that the benefits of the intended regulation justify its costs." The Reagan Executive Order stipulated that "a regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society."
- Finally, Clinton's Executive Order further skews the cost/benefit analysis in favor of more regulations by broadening the definition of costs and benefits to account for qualitative measures that are, by the President's own admission, "difficult to quantify, but nevertheless essential to consider." By encouraging agencies to add intangible values that are not objectively quantifiable, almost any regulation can be justified.

Despite having acknowledged the enormous cost of federal regulations to the economy, the Clinton Administration offers little promise it will reduce the economic burden put on State and local governments, employers, and individual Americans. According to a recent column in *USA Today* of December 19, 1994, federal regulatory agencies now employ 131,412 people at an annual cost of nearly \$11.9 billion - both record numbers.

The Need for a Regulatory Moratorium

On December 12, 1994, Republican Leaders of Congress sent a letter to President Clinton requesting he issue an Executive Order imposing a moratorium on all federal rulemaking for the first 100 days of the 104th Congress. The letter stated that the President should make appropriate exceptions for certain categories of regulations, such as those that are subject to a statutory or judicial deadline or respond to emergencies, such as those that pose an imminent danger to human health or safety.

The Clinton Administration responded on December 14, 1994, with a letter from the Sally Katzen, director of the Office of Information and Regulatory Affairs. In her letter, she states that the Clinton Administration rejects the request for a moratorium, calling a moratorium a "blunderbuss that could work in unintended ways." In addition, the Clinton Administration deliberately ignored the health and safety exceptions suggested by the Republican leaders and raised the emotional examples of regulations dealing with "tainted meat" and "Desert Storm Syndrome."

An issue expected to be debated by the Senate and House shortly is whether the Congress should pass legislation requiring the Administration to suspend the promulgation of all regulations that do not respond to imminent dangers to human health and safety. The purpose of the suspension would be to allow time for the new committee and subcommittee chairs to review the regulations being promulgated by the agencies and determine whether additional legislation is needed to alter those regulations for which fairly estimated costs greatly outweigh real benefits, or which are otherwise unwise in their present form. In addition, a statutory moratorium would permit the Administration to postpone a number of very controversial and potentially devastating regulations that are being required by the courts to be finalized. Three of the most important regulations that are subject to court-ordered finalization before summer are the EPA's California clean air federal implementation plan; the Great Lakes Initiative clean water quality guidance; and the clean air "enhanced monitoring" rule.

This *Regulation Watch* was prepared with the assistance of 1994 RPC Visiting Fellows Jim Roberts, Kelly Southall, and John Stoner.

Examples of Regs That Will Be Finalized Before July 1995

California Clean Air Implementation Plan: To bring the State of California into compliance with the Clean Air Act of 1977's requirements (not the realistic 1990 amendments), EPA intends to meet a judicially imposed deadline to issue a final Federal Implementation Plan for California by February 15, 1995. The governor's office has estimated direct compliance costs over the 15-year life of the EPA's Federal Implementation Plan (FIP) to be \$8 (eight) billion per year, with economic losses to the State of California of more than \$17 billion and job losses of 165,000. However, other economists predict 115,000 job losses in the Los Angeles area alone. The EPA initial FIP comprised 342 Federal Register pages, with hundreds of additional pages of requirements that were not published. There is concern that portions of the FIP may not produce over-all improvement of California's air quality because of the many non-sensical and counter-productive provisions in the FIP. Motor Vehicle Manufacturers estimate compliance will cost \$2,800 per new vehicle.

Great Lakes Initiative Clean Water Quality Guidance: These regulations are subject to a judicially imposed deadline of March 13, 1995. EPA estimates compliance costs at least \$190 billion in annual direct and indirect costs for the eight states bordering the Great Lakes, but notes that costs could be as high as \$505 million per year. Many are concerned that the Great Lakes Initiative, which addresses only one-tenth of the potential pollutants in the lakes, will offer few environmental benefits. Other economists predict that municipalities in the region will spend over \$2.7 billion to implement the initiative, with private sector compliance costs running into the billions of dollars. This program is being implemented despite the fact that seven of the eight Great Lakes states already have EPA-approved programs in effect for water quality enhancement.

Clean Air Enhanced Monitoring Rule: The judicially imposed deadline for EPA to issue a final regulation covering "enhanced monitoring" to ensure continuous compliance with Clean Air Act emissions standards is April 30, 1995. EPA estimates the compliance costs imposed by the rule to be \$1 billion per year, however, the American Petroleum Institute estimates that oil industry compliance costs alone are at least \$350 million per year after the initial investment of \$400 million. In addition, the rule will impose massive additional burdens on state regulators to review the mountains of records required on each of the 30,000 emission units covered by the rule. The proposed rules refer to reference documents and protocols that run into the hundreds of pages, but which EPA considers outside the formal rulemaking process, has not published, and does not consider the documents to be subject to judicial review as would be normal regulations.

OSHA Ergonomics Protection Standard: A Notice of Proposed Rulemaking is possible this spring on OSHA's new program to require employers to implement new standards to prevent disorders associated with repeated traumas and other musculoskeletal disorders. Private economists predict that this most comprehensive of all OSHA regulatory programs will cost the private sector \$21 billion to implement.